

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF KEVIN J. POST IN
SUPPORT OF MOTOROLA
MOBILITY'S AND GENERAL
INSTRUMENT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

**NOTED ON MOTION CALENDAR:
Friday, August 10, 2012**

DECLARATION OF KEVIN J. POST IN SUPPORT OF
MOTOROLA MOBILITY'S AND GENERAL INSTRUMENT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT
CASE NO. C10-1823-JLR

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1 I, KEVIN J. POST, declare as follows:

2 1. I am an associate at the law firm of Ropes & Gray LLP, counsel to Motorola
3 Mobility, Inc. and General Instrument Corporation (collectively "Motorola")¹, Defendants in this
4 action, and am a member in good standing of the bars of the State of New York and the District of
5 Columbia.

6 2. I submit this declaration in support of Defendants' Motion for Partial Summary
7 Judgment, submitted concurrently herewith.

8 3. Attached as Exhibit 1 is a true and correct copy of Defendant Microsoft
9 Corporation's Answer and Counterclaims to Plaintiffs' First Amended Complaint for Patent
10 Infringement in *Motorola Mobility, Inc. v. Microsoft Corp.*, Case No. 10-cv-00699, which was
11 filed in the Western District of Wisconsin on Jan. 25, 2011. This document was previously
12 submitted to the Court as Exhibit 8 to the January 3, 2012 Declaration of Kevin J. Post in Support
13 of Defendants' Opposition to Microsoft's Motion for Partial Summary Judgment Dismissing
14 Motorola's Claim for Injunctive Relief (Dkt. No. 144).

15 4. Attached as Exhibit 2 is a true and correct copy of selected pages from the
16 transcript of the January 20, 2012 hearing held in *Certain Gaming and Entertainment Consoles,*
17 *Related Software, and Components Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw,
18 which reproduces the confidential sworn testimony given by Kirk W. Dailey and bears non-
19 consecutive production numbers MOTM_WASH1823_0401216-427 (filed under seal). This
20 document was previously submitted to the Court as Exhibit 2 to the March 30, 2012 Declaration of
21 Kevin J. Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

22 5. Attached as Exhibit 3 is a true and correct copy of the April 2009 Patent License
23 Agreement between Microsoft Corporation and Commonwealth Scientific and Industrial Research
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26 ¹ As noted in the Motion, Motorola Solutions, Inc., which is now independent from Motorola Mobility and General Instrument, takes no position on the issues raised in the Motion for Partial Summary Judgment.

1 Organisation (CSIRO), bearing production numbers MS-MOTO_1823_00005195128-52 (filed
2 under seal).

3 6. Attached as Exhibit 4 is a true and correct copy of the Rebuttal Testimony of Kirk
4 Dailey, marked as Hearing Exhibit CX-778C and admitted into evidence in *Certain Gaming and*
5 *Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752
6 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0398598-625 (filed
7 under seal). This document was previously submitted to the Court as Exhibit 4 to the March 30,
8 2012 Declaration of Kevin J. Post in Support of Defendants' Motion for Partial Summary
9 Judgment (Dkt. No. 230).

10 7. Attached as Exhibit 5 is a true and correct copy of a compilation of Patent
11 Statements and Licensing Declarations submitted by Motorola Mobility, Inc., Motorola, Inc. and
12 General Instrument Corp. to the ITU, bearing consecutive production numbers
13 MOTM_WASH1823_0000035-67, 74-77. This document was previously submitted to the Court
14 as Exhibit 15 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants'
15 Motion for Partial Summary Judgment (Dkt. No. 230).

16 8. Attached as Exhibit 6 is a true and correct copy of the Rebuttal Expert Testimony
17 of Dr. David J. Teece, marked as Hearing Exhibit CX-759C and admitted into evidence in *Certain*
18 *Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-
19 TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers MOTM_WASH1823_0400260-
20 86 (filed under seal). This document was previously submitted to the Court as Exhibit 6 to the
21 March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion for Partial
22 Summary Judgment (Dkt. No. 230).

23 9. Attached as Exhibit 7 is a true and correct copy of a compilation of Letters of
24 Assurance submitted by Motorola, Inc. and Symbol Technologies, Inc. to the IEEE, bearing
25 consecutive production numbers MOTM_WASH1823_0000001-34. This document was
26

1 previously submitted to the Court as Exhibit 16 to the March 30, 2012 Declaration of Kevin J.
2 Post in Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

3 10. Attached as Exhibit 8 is a true and correct copy of Motorola Mobility, Inc.'s
4 Written Responses to Certain Topics of Microsoft's Third Amended 30(b)(6) Notice of Deposition
5 and attached Exhibit E, which was served via email on April 12, 2012 (filed under seal). This
6 document was previously submitted to the Court as Exhibit 27 to the April 13, 2012 Second
7 Declaration of Kevin J. Post in Support of Defendants' Opposition to Microsoft's Motion for
8 Partial Summary Judgment of Breach of Contract (Dkt. No. 273).

9 11. Attached as Exhibit 9 is a true and correct copy of selected pages from a document
10 titled "Expert Report of Louis P. Berneman, Ed D, CLP," dated June 20, 2011, marked as
11 "CONTAIN[ING] CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO
12 PROTECTIVE ORDER," and submitted in *Certain Mobile Devices, Associated Software, and*
13 *Components Thereof*, ITC Inv. No. 337-TA-744 (filed under seal). By party agreement, this
14 document may be relied upon in this case. This document was previously submitted to the Court
15 as Exhibit 29 to the April 13, 2012 Second Declaration of Kevin J. Post in Support of Defendants'
16 Opposition to Microsoft's Motion for Partial Summary Judgment of Breach of Contract (Dkt. No.
17 273).

18 12. Attached as Exhibit 10 is a true and correct copy of the Rebuttal Expert Witness
19 Testimony of Richard J. Holleman, marked as Hearing Exhibit CX-758C and admitted into
20 evidence in *Certain Gaming and Entertainment Consoles, Related Software, and Components*
21 *Thereof*, Inv. No. 337-TA-752 (U.S.I.T.C.) by ALJ Shaw, bearing production numbers
22 MOTM_WASH1823_0400192-207 (filed under seal). This document was previously submitted
23 to the Court as Exhibit 10 to the March 30, 2012 Declaration of Kevin J. Post In Support of
24 Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

25 13. Attached as Exhibit 11 is a true and correct copy of the December 1, 2011 Patent
26 License Agreement between Motorola Mobility, Inc. and VTech Communications, Inc. and VTech

1 Telecommunications, Ltd., bearing production numbers MOTM_WASH1823_0394368-401 (filed
2 under seal). This document was previously submitted to the Court as Exhibit A (Dkt. No. 183) to
3 the Declaration of Philip S. McCune in Support of Defendants' Opposition to Microsoft's Motion
4 for Summary Judgment (Dkt. No. 182).

5 14. Attached as Exhibit 12 is a true and correct copy of the IEEE-SA Standards Board
6 Bylaws, which were approved by the IEEE-SA Board of Governors in December 2009, bearing
7 production numbers MOTM_WASH1823_0054722-41. This document was previously submitted
8 to the Court as Exhibit 12 to the March 30, 2012 Declaration of Kevin J. Post in Support of
9 Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

10 15. Attached as Exhibit 13 is a true and correct copy of the Guidelines for
11 Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC, dated March 1, 2007,
12 bearing production numbers MOTM_WASH1823_0092826-39. This document was previously
13 submitted to the Court as Exhibit 13 to the March 30, 2012 Declaration of Kevin J. Post in
14 Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

15 16. Attached as Exhibit 14 is a true and correct copy of a document entitled
16 "Negotiating Standards-Related Patent Licenses: How the Deal Is Done part II," by Michele K.
17 Herman, published in Landslide® magazine, Volume 3, Number 2, November/December 2010,
18 bearing production numbers MOTM_WASH1823_0402432-36. This document was previously
19 submitted to the Court as Exhibit 23 to the March 30, 2012 Declaration of Kevin J. Post in
20 Support of Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

21 17. Attached as Exhibit 15 is true and correct copy of an article entitled
22 "Standardization and Technological Innovation: Some Reflections on Ex-Ante Licensing,
23 FRAND, and the Proper Means to Reward Innovators," by Damien Geradin, presented to the
24 Conference "Intellectual Property and Competition Law," Brussels, June 8, 2006, bearing
25 production numbers MOTM_WASH1823_0402437-53. This document was previously submitted
26

1 to the Court as Exhibit 25 to the March 30, 2012 Declaration of Kevin J. Post in Support of
2 Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

3 18. Attached as Exhibit 16 is a true and correct copy of a document entitled
4 "Interpreting and Enforcing the Voluntary FRAND Commitment," by Roger G. Brooks & Damien
5 Geradin, 9 *International Journal of IT Standards and Standardization Research* 1, 1-23 (January-
6 June 2011).

7 19. Attached as Exhibit 17 is a true and correct copy of the June 2006 Patent License
8 Agreement between Motorola, Inc. and BenQ Corporation and BenQ Mobile GmbH & Co. OHG,
9 bearing production numbers MOTM_WASH1823_0023674-749 (filed under seal).

10 20. Attached as Exhibit 18 is a true and correct copy of a document entitled
11 "Considerations for Developing or Revising PSO IPR Policies," GSC-13, IPR WG, Agenda Item
12 9, TIA, identified as Document # GSC13-IPR-14r1, dated July 16, 2008, and listing Contact(s) as
13 Kent Baker, Dan Bart and Amy Marasco, which bears production numbers
14 MOTM_WASH1823_0402454-70. This document was previously submitted to the Court as
15 Exhibit 18 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion
16 for Partial Summary Judgment (Dkt. No. 230).

17 21. Attached as Exhibit 19 is a true and correct copy of a document entitled
18 "Standards-Setting, IPR Policies and Stakeholder Considerations," by Amy Marasco, General
19 Manger, Standards Strategy, Microsoft Corporation, bearing production numbers
20 MOTM_WASH1823_0054850-64. This document was previously submitted to the Court as
21 Exhibit 19 to the March 30, 2012 Declaration of Kevin J. Post in Support of Defendants' Motion
22 for Partial Summary Judgment (Dkt. No. 230).

23 22. Attached as Exhibit 20 is a true and correct copy of a June 14, 2011 letter sent by
24 David Heiner, Microsoft's Vice President and Deputy General Counsel, and Amy Marasco,
25 Microsoft's General Manager, Standards Strategy and Policy, to the Federal Trade Commission's
26 Office of the Secretary regarding Patent Standards Workshop, Project No. P11-1204, bearing

1 production numbers MOTM_WASH1823_0053365-81. This document was previously submitted
2 to the Court as Exhibit 20 to the March 30, 2012 Declaration of Kevin J. Post in Support of
3 Defendants' Motion for Partial Summary Judgment (Dkt. No. 230).

4 I declare under penalty of perjury of the laws of the United States and the State of
5 Washington that the foregoing is true and correct.

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7 DATED this 18th day of July, 2012.

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10 /s/ Kevin J. Post

11 Kevin J. Post
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 18th day of July, 2012.

/s/

Marcia A. Ripley

Marcia A. Ripley